

PART 16 — TYPES OF CONTRACTS

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SUBPART 16.5 — INDEFINITE-DELIVERY CONTRACTS

16.5 Policy.

(S-101) Applicability.

This subpart applies to all USACE IDCs, except contracts for A-E services.

(S-102) Planning for Use of IDCs.

(a) Each District shall develop an annual written acquisition strategy covering IDCs with the OAS referred to in 7.102 (S-101) above.

(1) The strategy shall compare the anticipated workload (which may be based on historical trends) to the capabilities and remaining capacities of current IDCs and demonstrate the need for new IDCs. The strategy will include the analysis below.

(2) The strategy shall assure a mix of large and small IDCs of various types to provide meaningful opportunities for small business firms to compete.

(3) Nation-wide IDCs shall not be used unless approved by HQUSACE.

(4) The strategy shall be fully staffed (see 7.102), including with SBA.

(b) The scope of each IDC shall be as specific as possible, rather than a broad range of services or supplies, to permit a proper selection of the firm providing the best value to the Government.

(c) An IDC solicitation and contract must specify a defined boundary *and either* a specific installation or cluster of installations to be served *or* a type of work. This information will be included in the solicitation and contract.

(1) The contracting officer *must* make every reasonable effort to ensure that sufficient work is available to be awarded under the contract, negating the potential for awarding an underutilized contract. Each contract awarded *must* be based on an actual

known requirement for work.

(2) Work at non-specified installations may be acquired under an IDC as long as the work is for the customer(s) or program(s) specified in the contract and is located in the geographical area specified in the contract.

(d) Care shall be taken so that IDCs do not duplicate the scopes of work of other non-IDC contracts.

(S-103) General Limitations on Use of IDCs.

(a) Indefinite delivery contracts (IDCs) may be used *only if* one or more of the following conditions applies --

(1) The cost to procure the required services or supplies individually through normal selection procedures is uneconomical compared to the cost of the services or supplies themselves;

(2) The time required to procure the required services or supplies individually through normal selection procedures will cause an unacceptable delay in fulfilling the requirements;

(3) Technical continuity among related requirements is essential;

(4) Significant cost savings in contract price and/or contract administration will accrue by having a single contractor perform several similar requirements; or

(5) Management of more than one contractor on an installation presents unacceptable administration problems in such areas as coordination and movement of work forces and equipment, separation and acceptance of contractor responsibility, and verification of performance and progress.

(b) See 36.601-3-90 regarding multiple awards of IDCs for A-E services.

(S-104) Limitations on IDC Dollar Amounts.

(a) The *minimum* dollar amount for each IDC

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contract shall be based on an actual known requirement for work. See (S-108) below.

(b) The *maximum* dollar amount for each IDC contract should be established on a case-by-case analysis considering the type of work, anticipated workload, effects on competition, and, in coordination with the deputy for small business, the ability of small business firms to compete for the contracts. Document the analysis and coordination.

(c) The strategy shall assure mix of large and small IDCs of various types to provide meaningful opportunities for small business firms to compete.

(d) The amount of each individual IDC should not be arbitrarily fixed at the maximum authorized amounts. Rather, the contract amount should be established on a case-by-case analysis considering the type of work, anticipated workload, effects on competition, and, in coordination with the deputy for small business, the ability of small business firms to compete for the contract. Document this analysis and coordination.

(e) If a task order is expected to exceed 50 percent of the contract amount for the entire period, document the contract file to justify why a task order was used instead of publicly announcing the requirement.

(f) Each task order shall provide for a complete and usable product.

(S-105) Criteria for Awarding Task/Delivery Orders.

(a) When two or more IDCs contain duplicative scopes of work so that a particular task order might be issued under more than one of the contracts, the solicitations and the contracts shall state the criteria to be used in allocating orders among the contracts.

(b) Appropriate criteria include performance and quality of deliverables under the current IDCs, current capacity to accomplish the order in the required time, uniquely specialized experience, equitable distribution of work among the contractors, price, and other relevant factors.

(c) Document the contract file to justify the basis for issuing a task order under a particular IDC when two or more IDCs contain duplicative scopes of work. See FAR 16.505(b)(4).

(d) Oral orders ordinarily should not be used. See FAR 16.505(a)(4).

(S-106) Options.

The IDC option "period" need not be stated as "one year".

(S-107) Waivers of these IDC requirements.

(a) Requests for individual or class waivers to increase the number of option periods may be submitted to the PARC for approval, provided --

(1) The basis for the waiver is justified by a formal or informal acquisition plan (see 7.103(c)(S-100)) and is supported by quantitative information concerning specific anticipated requirements.

(2) The need for continuity of services for the additional period(s) clearly outweighs the adverse impacts on competition.

(3) The approval is obtained prior to the issuance of the solicitation.

(4) Waivers approved after the issuance of the solicitation must be reflected in an amendment.

(b) Waivers after the due date for submission of offers require J&As in accordance with FAR 6.303 and 6.404.

(c) Neither a waiver nor a J&A is required to exercise an unused contract option before the expiration of the base contract period (or preceding option period), if the contract amount for the base period (or preceding option period) has been exhausted or nearly exhausted, and this possibility is so indicated in the solicitation and the contract.

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(S-108) Guaranteed Minimum Dollar Amount for IDCs.

See EFARS 16.504 (a)(1) regarding the minimum dollar amount for IDCs. A guaranteed minimum amount shall be obligated in the basic contract period and at the time of exercising each contract option period. This guaranteed amount represents the Government's obligation to order a minimum in services in each contract performance period. In the unlikely event that no task or delivery orders are issued during the life of the contract period, the contractor shall be paid this amount.

16.504 Indefinite-quantity contracts.

(a)(1) Each indefinite quantity contract shall require the Government to order supplies or services priced at:

(i) Two percent of the stated maximum for the base period or \$500,000, whichever is less, and

(ii) For any option period that is exercised, 1 percent of the stated maximum or \$250,000, whichever is less.

(c)(1)(S-100) For Job Order Contracts and contracts for A-E services, the circumstances described in FAR 16.504 (c)(ii), (iii) and (iv) usually apply. Therefore multiple awards should not ordinarily be used. If used, there must be a reasonable expectation of sufficient work to require more than one contract. The contracting officer shall document any decision to use multiple awards in acquisition plans and strategy required by EFARS 7.103. For multiple awards involving A-E contracts, see 36.601-3-90(b).

16.505 Ordering.

(a)(4) See 36.601-3-90(g) for A-E contracts.

(b)(1) See 36.601-3-90(h) for A-E contracts

(4) Each indefinite delivery contract resulting from a multiple award shall include a statement substantially as follows:

"(i) More than one contract is being awarded for the same services (supplies) as this contract. Each contractor will be afforded a fair opportunity to be considered for each task (delivery) order in excess of \$2,500.

(ii) The contracting officer will consider the following factors when awarding a task (delivery) order: _____

(iii) If the contractor believes it was not fairly considered for a particular task (delivery) order, the contractor may present the matter to the contracting officer. The contractor may appeal the explanation or decision of the contracting officer to the USACE Ombudsman, who is the USACE PARC, at the following address: Headquarters, U.S. Army Corps of Engineers, Attention: CEPR-P (USACE Ombudsman), 20 Massachusetts Avenue N.W., Washington, D.C. 20314-1000. The ombudsman will review the contractor's complaint, and in coordination with the contracting officer, ensure that the contractor was afforded a fair opportunity to be considered for the task (delivery) order."

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16.603 Letter contracts.

16.603-3 Limitations.

For application to emergency/disaster situations see EFARS 17.74.